

Appl. No. : 09/909,101
Filed : July 19, 2001

REMARKS

Procedural History

Claims 1 through 6 were pending in the application. By way of the present amendment, Applicants amended Claims 1-6 to comply with 35 U.S.C. 112, second paragraph, and not for reasons of overcoming the prior art of record. The present claim amendments do not narrow the scope of the pending claims. In addition, Applicants added new Claims 23-81. Claims 1-6, and 23-81 remain pending for consideration.

Objection to the Specification

The Examiner objected to the specification and suggested that Applicants amend the priority claim to designate the present application a continuation-in-part, rather than a divisional, because (1) there was no election/restriction established in the parent case, or alternatively, because (2) the filed specification is not identical to the parent specification. Specifically, the "Summary of the Invention" section of the present application is not identical to the corresponding section of the parent application.

Applicants respectfully disagree with the Examiner's requirement to consider the case a continuation-in-part and do not believe that an election/restriction requirement in the parent case is a prerequisite to filing a divisional application. Moreover, Applicants disagree with the Examiner's statement that the current application must be considered a continuation-in-part because the specification is not identical to its parent.

According to M.P.E.P. § 201.06(c), "A continuation or divisional application may be filed under 35 U.S.C. 111(a) using the procedures set forth in 37 CFR 1.53(b), by providing... (B) a new specification and drawings and a copy of the signed oath or declaration as filed in the prior application provided the new specification and drawings do not contain any subject matter that would have been new matter in the prior application." Thus, it is the addition of new matter, and not an election/restriction requirement or lack of identity in the specification that mandates the use of a continuation-in-part in lieu of a divisional application.

Applicants have reviewed the specification and determined that no new matter has been introduced into the specification. Therefore, it is appropriate to consider the current application a divisional or continuation, but not a continuation-in-part application. Furthermore, Applicants disagree with any implication that new matter has been added. Although the wording of the "Summary of the Invention" section has been changed to more closely reflect the new claims set

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in the present application, both are fully supported in accordance with the statutory requirement of 35 U.S.C. § 112 ¶1 in the parent application as filed.

However, Applicants are aware of the typical nomenclature used when filing continuing applications, and therefore, Applicants have amended the specification to designate the current application a Continuation application as may be more common in the absence of a restriction requirement.

Objections to the Drawings

The drawings were objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the reference numeral “218” that is not found in the specification. Accordingly, the paragraph beginning on page 21, line 11 has been amended to include the reference numeral “218.” No new matter has been added to the specification.

The drawings are further objected to as failing to comply with 37 CFR 1.84(p)(5) because reference character “114” has been used to designate both the lock body (Figure 8) and the tissue contacting surface (Figure 5). Accordingly, Applicants are submitting a revised Drawings to correct this noted informality, and has designated the tissue contacting surface (of Figure 5) as reference numeral “115.” Accordingly, the paragraph beginning on page 19, line 9 has been amended to reflect the amendment to Figure 5.

Rejections of Claims 1-6 under 35 U.S.C. §112 ¶2

Claim 1 stands rejected under 35 U.S.C. §112 ¶2 as being indefinite. Specifically, the Examiner indicated that there is insufficient antecedent basis for the limitation “the adjacent atrial musculature.” Accordingly, Claim 1 has been amended to correct the Examiner’s noted lack of apparent antecedent basis. Applicants respectfully thank the Examiner for the indicated allowability of Claim 1 if amended to overcome the noted rejection. Applicants respectfully request allowance of Claim 1.

Claims 2-6 are rejected under 35 U.S.C. §112 ¶2 as being indefinite because the use of “as in” in line 1 apparently renders the claims unclear. Claims 2-6 have been amended, as suggested by the Examiner. Accordingly, the Applicants respectfully request allowance of claims 2-6.

Finally, the Examiner suggested that Claim 3 be rewritten following the suggested Markush format for listing of elements. Accordingly, Claim 3 has been rewritten as suggested.

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New Claims

New Claims 23-81 have been added to more fully claim subject matter Applicants regard as the invention. New Claims 23-45 all depend directly or indirectly from Claim 1, and are in condition for allowance. New Claims 47-81 depend directly or indirectly from new independent Claim 46. Claim 46 is believed to be allowable over the art for reasons similar to Claim 1. Applicants respectfully request allowance of new Claims 23-81.

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CONCLUSION

Based on the above, the Applicants respectfully submit that the pending claims are in condition for immediate allowance. Should there be any questions or issues that could be resolved via a telephone conversation, the Applicants invite the Examiner to contact the undersigned at the number shown below.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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By: *Jerry P. Sanders*
Jeremy P. Sanders
Registration No. 47,916
Attorney of Record
Customer No. 20,995
(949) 760-0404

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